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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 THERON KENNETH HOLSTON,  
12 Plaintiff,  
13 v.  
14 GARCIA,  
15 Defendant.  
16

No. 2:20-CV-2466-DJC-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, who is proceeding pro se, brings this civil rights action pursuant to 42  
18 U.S.C. § 1983. Pending before the Court is Defendant's motion for summary judgment. See  
19 ECF No. 55. Plaintiff has filed a declaration in opposition, an opposition brief, and a  
20 supplemental opposition brief. See ECF Nos. 63, 65, and 79. Defendant has filed a reply. See  
21 ECF No. 82.

22 The Federal Rules of Civil Procedure provide for summary judgment or summary  
23 adjudication when "the pleadings, depositions, answers to interrogatories, and admissions on file,  
24 together with affidavits, if any, show that there is no genuine issue as to any material fact and that  
25 the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The  
26 standard for summary judgment and summary adjudication is the same. See Fed. R. Civ. P.  
27 56(a), 56(c); see also Mora v. ChemTronics, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998). One of  
28 the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. See

1 Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Under summary judgment practice, the  
2 moving party

3 . . . always bears the initial responsibility of informing the district court of  
4 the basis for its motion, and identifying those portions of “the pleadings,  
5 depositions, answers to interrogatories, and admissions on file, together  
6 with the affidavits, if any,” which it believes demonstrate the absence of a  
7 genuine issue of material fact.

8 Id., at 323 (quoting former Fed. R. Civ. P. 56(c)); see also Fed. R. Civ. P.  
9 56(c)(1).

10 If the moving party meets its initial responsibility, the burden then shifts to the  
11 opposing party to establish that a genuine issue as to any material fact actually does exist. See  
12 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to  
13 establish the existence of this factual dispute, the opposing party may not rely upon the  
14 allegations or denials of its pleadings but is required to tender evidence of specific facts in the  
15 form of affidavits, and/or admissible discovery material, in support of its contention that the  
16 dispute exists. See Fed. R. Civ. P. 56(c)(1); see also Matsushita, 475 U.S. at 586 n.11. The  
17 opposing party must demonstrate that the fact in contention is material, i.e., a fact that might  
18 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.  
19 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th  
20 Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could  
21 return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436  
22 (9th Cir. 1987). To demonstrate that an issue is genuine, the opposing party “must do more than  
23 simply show that there is some metaphysical doubt as to the material facts. . . . Where the record  
24 taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no  
25 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted). It is sufficient that “the  
26 claimed factual dispute be shown to require a trier of fact to resolve the parties’ differing versions  
27 of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631.

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1 In resolving the summary judgment motion, the Court examines the pleadings,  
2 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.  
3 See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed, see Anderson,  
4 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed before the  
5 court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587.  
6 Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to  
7 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen  
8 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir.  
9 1987). Ultimately, "[b]efore the evidence is left to the jury, there is a preliminary question for the  
10 judge, not whether there is literally no evidence, but whether there is any upon which a jury could  
11 properly proceed to find a verdict for the party producing it, upon whom the onus of proof is  
12 imposed." Anderson, 477 U.S. at 251.

### 13 14 I. PLAINTIFF'S ALLEGATIONS

15 This action proceeds on Plaintiff's original complaint. See ECF No. 1. Plaintiff  
16 initially named two defendants: (1) Brown, an officer with the Placerville Police Department; and  
17 (2) Garcia, a deputy with the El Dorado County Sheriff's Office. See id. at 2. Defendant Brown  
18 was later voluntarily dismissed from the case. See ECF Nos. 24 and 25. Plaintiff's remaining  
19 claim against Garcia alleges excessive force by a law enforcement officer in violation of the  
20 Fourteenth Amendment. See ECF No. 1, pg. 6.

21 Plaintiff claims he was arrested on July 28, 2020, by Brown for failing to register  
22 as a sex offender per Cal. Penal Code § 290. See id. at 3. Plaintiff was then transported by Brown  
23 to the El Dorado County Jail. See id. at 6. Once at the jail, Plaintiff claims he was removed from  
24 the police car by force while handcuffed behind his back. See id. Plaintiff claims that, as Garcia  
25 and another officer were walking Plaintiff from the sally port, he "used profanities against no one  
26 in particular." Id. Plaintiff alleges that, once inside the building, Garcia momentarily released  
27 Plaintiff's arm and struck Plaintiff with a closed left fist to Plaintiff's left eye. See id. at 6-7.  
28 Plaintiff alleges that this broke his prescription glasses and caused bruising on Plaintiff's left eye

1 and cheek area. See id. at 7.

2 Plaintiff claims that Garcia then tackled Plaintiff to the ground and handcuffed him  
3 behind his back. See id. Plaintiff then walked approximately fifteen feet to face a wall, where  
4 Garcia instructed another officer to unlock Plaintiff's handcuffs. See id. Once the handcuffs were  
5 removed from Plaintiff's left wrist, Plaintiff claims Garcia forcefully twisted Plaintiff's left arm  
6 behind his back while dragging him to the ground. See id. at 7-8. Plaintiff alleges that, once on  
7 the ground, Garcia struck Plaintiff with closed fists about Plaintiff's head and torso while other  
8 officers physically restrained Plaintiff. See id. at 8. Plaintiff claims that Garcia used this force as  
9 punishment for Plaintiff's use of profanities. See id. at 8-9.

10 Plaintiff seeks damages for his pain, suffering, and humiliation as well as damages  
11 incurred from breaking his prescription glasses. See id. at 6. Plaintiff further seeks punitive  
12 damages for the alleged excessive force. See id. at 9.

## 13 14 II. THE PARTIES' EVIDENCE

### 15 A. Defendant's Motion

16 Defendant's motion for summary judgment is supported by the following: (1) a  
17 separate statement of undisputed facts, ECF No. 55-1; (2) a declaration by Garcia, ECF No. 55-3;  
18 (3) a declaration by Jacob J. Graham, ECF No. 55-4; and (4) a declaration by Jonathon Eslick,  
19 ECF No. 55-5.

20 Defendant asserts the following facts are undisputed:

21 1. On July 28, 2020, Plaintiff Theron Holston was arrested  
22 and taken to El Dorado County Jail to serve a period of flash incarceration  
pursuant to violating the conditions of his parole.

23 2. Upon entry to the jail at 3:00 p.m., Holston began cursing  
24 and making threats that he was going to fight the officers.

25 3. Officer Garcia was in control of Holston's right arm while  
another jail officer controlled Holston's left arm.

26 4. Holston's hands were handcuffed in the front.

27 5. Within seconds of entering the jail's booking area, Holston  
28 tensed up and pulled away from Officer Garcia and the other jail officer  
while cursing at them.

1           6.     Officer Garcia perceived Holston's agitated state and  
2     ordered Holston to stop resisting.

3           7.     Holston relaxed, but after a few seconds tensed up and  
4     attempted to bring his hands up to his chest.

5           8.     At this point, Officer Garcia was unable to keep Holston's  
6     hands down in front of him nor place him in a more secure control hold so  
7     he released his grip of Holston's right arm and did a hair-pull takedown,  
8     which consisted of Officer Garcia grabbing the back of Holston's head  
9     and pulling him by his hair down to the floor.

10          9.     Officer Garcia's sole intent in using this takedown was to  
11     maintain order and security.

12          10.    Officer Garcia did not punch Holston in the eye, as  
13     evidence by Holston's glasses, which remained on his face undisturbed.

14          11.    Once on the floor, Holston continued resisting by turning  
15     his lower body and legs.

16          12.    Officer Garcia repeatedly ordered Holston to stop resisting  
17     while they were on the ground.

18          13.    After about a minute, Holston relaxed, and Officer Garcia  
19     and the other jail officer helped Holston up to a standing position.

20          14.    At this point, additional officers had already responded to  
21     the intake area to assist.

22          15.    Before continuing the booking process, Officer Garcia  
23     placed Holston against the intake wall, so that he could search Holston and  
24     switch his handcuffs to behind his back.

25          16.    Officer Garcia advised Holston of his intention to switch  
26     his handcuffs and ordered Holston to resist while he made this change.

27          17.    Before pat searching Holston, Officer Garcia asked Holston  
28     if he had anything in his pockets that could stick or poke him to which  
   Holston stated, "I hope so."

          18.    Holston continued cursing and stating he was going to fight  
   Officer Garcia.

          19.    Officer Garcia then conducted a pat search of Holston and  
   found no drugs, weapons, or needles.

          20.    After searching Holston, Officer Garcia proceeded to  
   remove Holston's cuffs so he could make the transition to behind the back.

          21.    Before doing so, Holston was again ordered not to resist.

          22.    However, as soon as his cuffs were removed, Holston again  
   attempted to pull away from the officers' grip of him and pushed his left  
   elbow towards one of the officer's head.

1           23. Officer Garcia and several other officers perceived  
2 Holston's resistance and immediately responded by taking Holston down  
3 onto the intake floor.

4           24. The officers then spent approximately two minutes trying  
5 to handcuff Holston behind the back while on the ground.

6           25. At no point did any officer strike or kick Holston while he  
7 was on the ground.

8           26. Officer Garcia eventually handcuffed Holston behind the  
9 back and then assisted him to his feet and sat him in an intake booth.

10           27. Holston's intake process was then completed without  
11 further incident.

12           28. LVN Christ Wise was on standby in the booking area  
13 during the incident.

14           29. After Holston was booked at approximately 3:23 p.m.,  
15 LVN Wise evaluated Holston.

16           30. During the examination, LVN Wise prepared a Receiving  
17 Screening Report.

18           31. As reflected in the Screening Report, Holston told LVN  
19 Wise he did not need any medical treatment and denied having injuries.

20           32. LVN Wise's report notes red marks and small abrasions to  
21 Holston's face.

22           33. There is, however, no mention of any physical injury that  
23 might be associated with being repeatedly struck in the head and torso  
24 while on the ground.

25           34. Holston's operative complaint alleges Officer Garcia used  
26 excessive force against him in violation of the Fourteenth Amendment  
27 during the July 28, 2020, incident.

28           35. Holston alleges two separate acts of excessive force  
occurred during the July 28, 2020, incident: (1) Officer Garcia threw his  
left closed fist with force into his left eye while he was handcuffed behind  
the back, causing his glasses to break; and (2) Officer Garcia proceeded to  
drag him to the ground and strike him multiple time with a closed fist  
about his head and torso.

          36. The only physical injury Holston claims to have suffered  
from the incident was bruising to his left eye and cheek area.

ECF No. 55-1, pgs. 1-6 (Defendant's separate statement of undisputed  
facts).

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**B. Plaintiff's Opposition**

Plaintiff filed a declaration in opposition to the motion, a statement of disputed facts, and an opposition brief. See ECF Nos. 63-65. Plaintiff claims that, at the time of his filings, he did not have access to Defendant's motion for summary judgment and was unaware of the facts alleged in the motion. See ECF No. 65, pg. 2. The Court directed that Defendant re-serve the motion for summary judgment and granted Plaintiff additional time to file a supplemental opposition. See ECF No. 74. Plaintiff then filed a supplemental opposition to the motion, which addresses the facts alleged in Defendant's motion. See ECF No. 79.

Facts Admitted

In Plaintiff's supplemental opposition, Plaintiff largely admits to facts surrounding the two takedowns. See ECF No. 79. Those admitted facts are as follows:

1. Defendant had control of Plaintiff's right arm while being escorted into the jail and Plaintiff was handcuffed in the front, although he had initially stated that he was handcuffed from behind.

2. After the first takedown, Defendant and another officer helped Plaintiff to his feet, other officers had responded to the incident, and Plaintiff was placed against a wall to be searched and to switch his handcuffs to behind his back.

3. Defendant conducted a pat search of Plaintiff and found no drugs, weapons, or needles.

4. Defendant then took off Plaintiff's handcuffs, but Plaintiff claims he was unaware of Defendant's intent to transition them to behind his back.

5. After the second takedown, Defendant handcuffed Plaintiff behind his back, helped him to his feet, and completed the intake process without further incident.

6. After Plaintiff was booked, Plaintiff was evaluated by LVN Wise, who prepared a Receiving Screening Report.

7. The report noted red marks and small abrasions on Plaintiff's face, although Plaintiff denies that this was the extent of his injuries.

8. Plaintiff admits that, in his initial complaint, he alleged excessive force in violation of the Fourteenth Amendment based on the two separate takedown and the blows to the head and torso associated with each takedown.

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1                   9. Although Plaintiff initially described the blow in the initial  
2 takedown as hitting the left side of his face, he now claims that the blow  
3 hit the right side of his face.

4 ECF No. 79, pgs. 3-7.

5 Facts Denied

6 Plaintiff denies the remainder of the facts outlined in Defendant's separate  
7 statement. These denials fall into four categories: (1) the initial cause of Plaintiff's arrest; (2)  
8 Plaintiff's words and actions; (3) Defendant's words and actions; and (4) Plaintiff's interaction  
9 with LVN Wise. See id. In support of these denials, Plaintiff attaches his own declaration to his  
10 supplemental opposition. See ECF No. 79-1.

11 Regarding the initial cause of Plaintiff's arrest, Plaintiff claims that he was arrested  
12 for failing to register as a sex offender per Cal. Penal Code § 290. See id. at 6. This contradicts  
13 Defendant's claim that Plaintiff was incarcerated for violation of his parole.

14 Regarding Plaintiff's words and actions, Plaintiff claims that he at no point  
15 threatened to fight any of the officers. See id. at 7. Plaintiff instead claims that he used the phrases  
16 "fuck you punk;" "fuck you nigger;" and "fuck you bitch" to express his disrespect. Id. This  
17 contradicts Defendant's claims that Plaintiff had threatened to fight the officers at multiple times  
18 throughout their encounter. Plaintiff further claims that he at no point resisted after he exited the  
19 police vehicle and entered the sally port, either by raising his arms or attempting to pull away  
20 from the officers. See id. at 6-9. Plaintiff does admit that he tensed up at one point as he believed  
21 that he was going to be assaulted but argues that this tensing was not resisting. See id. at 7-8.  
22 These claims contradict Defendant's claims that Plaintiff resisted the officers at multiple times  
23 throughout the encounter.

24 Regarding Defendant's words and actions, Plaintiff claims that Defendant at no  
25 point ordered Plaintiff to not resist. See id. at 8. This contradicts Defendant's claims that  
26 Defendant ordered Plaintiff to not resist multiple times throughout their encounter. Plaintiff  
27 further claims that Defendant punched him on the right side of his face and tackled him to the  
28 ground. See id. at 1-2. This contradicts Defendant's claim that he performed a hair-pull takedown  
and did not punch Plaintiff. Plaintiff also claims that, when Defendant brought him to the ground



1 the second time, Defendant began striking him on the head and torso. See id. at 4. This  
2 contradicts Defendant's claim that he did not punch or kick Plaintiff and was only trying to  
3 handcuff Plaintiff behind his back.

4 Finally, regarding Plaintiff's interaction with LVN Wise, Plaintiff claims that he  
5 did not tell LVN Wise that he did not need medical attention. See id. at 9. Plaintiff also claims  
6 that the red marks and abrasions on Plaintiff's face as noted in LVN Wise's report are indicative  
7 of blows to the head and torso. This contradicts Defendant's claims that there was no mention of  
8 physical injury associated with being repeatedly struck in the head and torso while on the ground.  
9 Plaintiff further claims that the red marks and abrasions do not capture the full extent of his  
10 injuries. See id. at 6. Plaintiff claims that, in addition to the red marks and abrasions, Plaintiff also  
11 suffered permanent injury to his shoulder caused by Defendant's actions during the second  
12 takedown. See ECF No. 79-1, pg. 4-5. This contradicts Defendant's claim that the only injury  
13 Plaintiff claimed in his original complaint was bruising to his left eye and cheek area.

14 Plaintiff's addendum to his supplemental opposition argues that, at the time of the  
15 encounter, Plaintiff was a pre-trial detainee, arrested for violation of Cal. Penal Code §§ 69 and  
16 290.018. See ECF No. 90. As such, Plaintiff argues that this case is properly analyzed under the  
17 Fourteenth Amendment reasonableness standard. See id. To support this claim, Plaintiff has  
18 attached a copy of the declaration and determination prepared by Officer A. Brown regarding his  
19 arrest prior to the encounter. See id. at 6.

### 20 21 **III. DISCUSSION**

22 Defendant argues that summary judgment is appropriate because: (1) Plaintiff's  
23 excessive force claim is properly analyzed under the Eighth Amendment, not the Fourteenth  
24 Amendment and, under the Eighth Amendment standard, the force used by Defendant was not  
25 applied maliciously and sadistically; and (2) Defendant is entitled to qualified immunity. See  
26 ECF No. 55. In Defendant's reply, as a response to Plaintiff argument that his claim must be  
27 analyzed under the Fourteenth Amendment's reasonableness standard, Defendant argues that,  
28 regardless of the standard applied, the force used was reasonable and not applied sadistically or

1 maliciously. See ECF No. 82.

2 For the reasons discussed below, the Court finds Defendant's arguments  
3 unpersuasive under either the Eighth Amendment standard or the Fourteenth Amendment  
4 standard. The Court also finds that Defendant is not entitled to qualified immunity at this time.

5 **A. Plaintiff's Excessive Force Claim**

6 This case proceeds on Plaintiff's excessive force claim against Defendant Garcia.  
7 Because the parties disagree as to whether the claim should be analyzed under the Fourteenth  
8 Amendment or Eighth Amendment, the Court will consider the merits of Plaintiff's claim under  
9 both standards.

10 1. Eighth Amendment

11 The treatment a prisoner receives in prison and the conditions under which the  
12 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
13 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,  
14 511 U.S. 825, 832 (1994). The Eighth Amendment "... embodies broad and idealistic concepts  
15 of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102  
16 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.  
17 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with  
18 "food, clothing, shelter, sanitation, medical care, and personal safety." Toussaint v. McCarthy,  
19 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when  
20 two requirements are met: (1) objectively, the official's act or omission must be so serious such  
21 that it results in the denial of the minimal civilized measure of life's necessities; and (2)  
22 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of  
23 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
24 official must have a "sufficiently culpable mind." See id.

25 When prison officials stand accused of using excessive force, the core judicial  
26 inquiry is "... whether force was applied in a good-faith effort to maintain or restore discipline,  
27 or maliciously and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992);  
28 Whitley v. Albers, 475 U.S. 312, 320-21 (1986). The "malicious and sadistic" standard, as

1 opposed to the “deliberate indifference” standard applicable to most Eighth Amendment claims,  
2 is applied to excessive force claims because prison officials generally do not have time to reflect  
3 on their actions in the face of risk of injury to inmates or prison employees. See Whitley, 475  
4 U.S. at 320-21. In determining whether force was excessive, the court considers the following  
5 factors: (1) the need for application of force; (2) the extent of injuries; (3) the relationship  
6 between the need for force and the amount of force used; (4) the nature of the threat reasonably  
7 perceived by prison officers; and (5) efforts made to temper the severity of a forceful response.  
8 See Hudson, 503 U.S. at 7. The absence of an emergency situation is probative of whether force  
9 was applied maliciously or sadistically. See Jordan v. Gardner, 986 F.2d 1521, 1528 (9th Cir.  
10 1993) (en banc). The lack of injuries is also probative. See Hudson, 503 U.S. at 7-9. Finally,  
11 because the use of force relates to the prison’s legitimate penological interest in maintaining  
12 security and order, the court must be deferential to the conduct of prison officials. See Whitley,  
13 475 U.S. at 321-22.

14 In the pending motion for summary judgment, Defendant argues that the force  
15 used by Defendant was not applied maliciously and sadistically. See ECF No. 55, pg. 7. More  
16 specifically, Defendant argues: (1) Defendant did not punch Plaintiff in the eye or strike him on  
17 the head and torso, and that video recordings reflect that Defendant only grabbed the back of  
18 Plaintiff’s head and attempt to handcuff him; (2) Plaintiff did not suffer any injury during the  
19 second takedown apart from red marks and small abrasions on his face, as reported by LVN  
20 Wise; and (3) even if Plaintiff’s allegations are true, the force applied does not show sadistic or  
21 malicious intent. See id. at 8-10.

22 Defendant asserts that the undisputed evidence shows that he did not punch  
23 Plaintiff in the eye or strike him on the head and torso. The Court disagrees and finds there is a  
24 genuine issue of material fact. Plaintiff has stated both in his original verified complaint, which  
25 the Court can consider as Plaintiff’s declaration, and in his opposition declaration that Defendant  
26 did punch him in the face and struck him on the head and torso. The surveillance video offered by  
27 the Defendant does not provide evidence sufficient to dispute Plaintiff’s claim. A reasonable jury  
28 could interpret the video evidence in any number of ways and ultimately decide that the video

1 supports Plaintiff's version of events.

2 As to Defendant's claim that Plaintiff did not suffer any injuries apart from red  
3 marks and small abrasions on his face, the Court again finds there is a genuine issue of material  
4 fact. Plaintiff claims that, in addition to the red marks and abrasions, he also experienced bruising  
5 around his eye and permanent damage to his shoulder. Defendant argues in the reply that  
6 Plaintiff's "conclusory lay opinion, however, cannot replace 'competent medical evidence' in  
7 summary judgment briefing." ECF No. 82, pg. 4 (citing Calloway v. Kelley, 2015 U.S. Dist.  
8 LEXIS 10420 at \*54 (E.D. Cal. Aug. 6, 2015)). Even taking this to be true, Defendant's  
9 argument is not persuasive. There is no indication in LVN Wise's report that she assessed  
10 Plaintiff's shoulder or his torso for bruising that would have been concealed by his shirt. As such,  
11 a reasonable jury could find that Plaintiff's claims of injury are true. Curiously, despite  
12 Defendant's argument that Plaintiff's declaration cannot overcome "competent medical  
13 evidence," Defendant provides no such evidence, for example by way of a declaration or  
14 deposition testimony from a medical doctor, to support the current motion.

15 Regarding Defendant's argument that, even if Plaintiff's claims are true, the force  
16 applied does not rise to the level of being sadistic and malicious, the Court finds the argument  
17 unpersuasive. Defendant argues that there is no evidence to support a claim that Defendant  
18 applied force maliciously and sadistically. See ECF No. 55, pg. 10. More specifically, Defendant  
19 argues that: (1) Plaintiff's threats to fight officers and attempts to resist show an undisputed need  
20 for force; (2) Plaintiff's claim of bruising constitutes minor injury; (3) Plaintiff's minor injuries  
21 show that the force used was proportionate to the need for force; (4) Defendant reasonably  
22 perceived a threat based on Plaintiff's threat to fight officers; and (5) Defendant attempted to  
23 temper the force used against Plaintiff by issuing several orders and warning to stop resisting. See  
24 id. at 8-10. Defendant relies on the facts outlined in his statement of undisputed material facts to  
25 support these claims. See ECF No. 55-1.

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1 As to Defendant's claim that Plaintiff suffered only minor injuries, this claim is  
2 disputed, as noted above, and may include permanent damage to Plaintiff's shoulder. As to  
3 Defendant's claims that Plaintiff threatened to fight officers and that Defendant issued several  
4 orders and warnings to stop resisting, Plaintiff denies both claims in his supplemental opposition.  
5 Although Plaintiff does admit that he directed obscenities at the officer, he denies ever  
6 threatening to fight the officers. Because the surveillance video provided with Defendant's  
7 motion does not contain audio, the words exchanged throughout the encounter cannot be  
8 conclusively ascertained at this time on the current record. Given the competing versions of  
9 events, the Court finds that there is a genuine issue of material fact as to the words used by  
10 Plaintiff.

11 Finally, as to Defendant's claim that Plaintiff resisted throughout the encounter,  
12 Plaintiff claims in his supplemental opposition that he did not resist and tensed up only in  
13 anticipation of harm. Again, because the surveillance video is susceptible to various  
14 interpretations, it does not provide evidence sufficient to conclusively disprove Plaintiff's claim.  
15 The Court thus finds that there is also a genuine issue of material fact regarding Plaintiff's  
16 resistance, or lack thereof, during the encounter.

## 17 2. Fourteenth Amendment

18 The Fourteenth Amendment's Due Process Clause applies to excessive force  
19 claims brought by pretrial detainees. See Kingsley v. Hendrickson, 576 U.S. 389, 400 (2015).  
20 "[T]he Fourteenth Amendment is more protective than the Eighth Amendment 'because the  
21 Fourteenth Amendment prohibits all punishment of pretrial detainees, while the Eighth  
22 Amendment only prevents the imposition of cruel and unusual punishment of convicted  
23 prisoners.'" Vazquez v. County of Kern, 949 F.3d 1153, 1163–64 (9th Cir. 2020) (quoting  
24 Demery v. Arpaio, 378 F.3d 1020, 1029 (9th Cir. 2004)). "[P]retrial detainees (unlike convicted  
25 prisoners) cannot be punished at all, much less 'maliciously and sadistically.'" Id. Unlike  
26 prisoners, "a pretrial detainee must show only that the force purposely or knowingly used against  
27 him was objectively unreasonable." Id. at 396–97. This assessment requires a court or factfinder  
28 to "make this determination from the perspective of a reasonable officer on the scene, including

1 what the officer knew at the time . . .” Id. at 397. In assessing the reasonableness or  
 2 unreasonableness of the force used, courts may consider:

3 the relationship between the need for the use of force and the amount of  
 4 force used; the extent of the plaintiff's injury; any effort made by the  
 5 officer to temper or to limit the amount of force; the severity of the  
 6 security problem at issue; the threat reasonably perceived by the officer;  
 7 and whether the plaintiff was actively resisting.

8 Id.

9 In Defendant’s reply to Plaintiff’s opposition, Defendant argues that, under the  
 10 Fourteenth Amendment standard for excessive force, the force used by Defendant was  
 11 reasonable.<sup>1</sup> See ECF No. 82, pgs. 3-5. As noted above, there are genuine issues of material fact  
 12 which must be decided by a jury. On the current record, a reasonable jury could decide that  
 13 Defendant applied force in an unreasonable manner given the circumstances. As such, the Court  
 14 finds that Defendant’s argument is also unpersuasive under the Fourteenth Amendment.

#### 15 **B. Qualified Immunity**

16 Government officials enjoy qualified immunity from civil damages unless their  
 17 conduct violates “clearly established statutory or constitutional rights of which a reasonable  
 18 person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In general,  
 19 qualified immunity protects “all but the plainly incompetent or those who knowingly violate the  
 20 law.” Malley v. Briggs, 475 U.S. 335, 341 (1986). In ruling upon the issue of qualified  
 21 immunity, the initial inquiry is whether, taken in the light most favorable to the party asserting the  
 22 injury, the facts alleged show the defendant’s conduct violated a constitutional right. See Saucier  
 23 v. Katz, 533 U.S. 194, 201 (2001). If a violation can be made out, the next step is to ask whether  
 24 the right was clearly established. See id. This inquiry “must be undertaken in light of the specific  
 25 context of the case, not as a broad general proposition . . .” Id. “[T]he right the official is  
 26 alleged to have violated must have been ‘clearly established’ in a more particularized, and hence  
 27 more relevant, sense: The contours of the right must be sufficiently clear that a reasonable  
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<sup>1</sup> It appears that Defendant erroneously argued the case under the Eighth Amendment in his original motion for summary judgment and now includes a Fourteenth Amendment analysis in the reply brief after Plaintiff objected in his opposition to application of the Eighth Amendment standard.

1 official would understand that what he is doing violates that right.” Id. at 202 (citation omitted).  
2 Thus, the final step in the analysis is to determine whether a reasonable officer in similar  
3 circumstances would have thought his conduct violated the alleged right. See id. at 205.

4 When identifying the right allegedly violated, the court must define the right more  
5 narrowly than the constitutional provision guaranteeing the right, but more broadly than the  
6 factual circumstances surrounding the alleged violation. See Kelly v. Borg, 60 F.3d 664, 667 (9th  
7 Cir. 1995). For a right to be clearly established, “[t]he contours of the right must be sufficiently  
8 clear that a reasonable official would understand [that] what [the official] is doing violates the  
9 right.” See Anderson v. Creighton, 483 U.S. 635, 640 (1987). Ordinarily, once the court  
10 concludes that a right was clearly established, an officer is not entitled to qualified immunity  
11 because a reasonably competent public official is charged with knowing the law governing his  
12 conduct. See Harlow v. Fitzgerald, 457 U.S. 800, 818-19 (1982). However, even if the plaintiff  
13 has alleged a violation of a clearly established right, the government official is entitled to  
14 qualified immunity if he could have “. . . reasonably but mistakenly believed that his . . . conduct  
15 did not violate the right.” Jackson v. City of Bremerton, 268 F.3d 646, 651 (9th Cir. 2001); see  
16 also Saucier, 533 U.S. at 205.

17 The first factors in the qualified immunity analysis involve purely legal questions.  
18 See Trevino v. Gates, 99 F.3d 911, 917 (9th Cir. 1996). The third inquiry involves a legal  
19 determination based on a prior factual finding as to the reasonableness of the government  
20 official’s conduct. See Neely v. Feinstein, 50 F.3d 1502, 1509 (9th Cir. 1995). The district court  
21 has discretion to determine which of the Saucier factors to analyze first. See Pearson v. Callahan,  
22 555 U.S. 223, 236 (2009). In resolving these issues, the court must view the evidence in the light  
23 most favorable to plaintiff and resolve all material factual disputes in favor of plaintiff. See  
24 Martinez v. Stanford, 323 F.3d 1178, 1184 (9th Cir. 2003).

25 In Defendant’s motion for summary judgment, Defendant argues that, even if  
26 Defendant’s actions are considered excessive force, he is still entitled to qualified immunity.  
27 Defendant argues that: (1) Defendant did not violate Plaintiff’s constitutional right to be free from  
28 cruel and unusual punishment as the force used was reasonable; and (2) a reasonable officer in

1 Defendant's position would not have believed Defendant's actions were unconstitutional. See  
2 ECF No. 55, pg. 11. The Court finds that Defendant's arguments are not persuasive. Viewing the  
3 evidence in the light most favorable to Plaintiff, Defendant is not entitled to qualified immunity.

4 As noted above, there are genuine issues of material fact as to whether Defendant  
5 violated Plaintiff's constitutional rights, either under the Eighth Amendment or Fourteenth  
6 Amendment. Viewing the evidence in the light most favorable to Plaintiff, a jury could conclude  
7 that Plaintiff was not resisting or threatening to fight officers, Defendant at no point ordered or  
8 warned Plaintiff not to resist, Defendant struck Plaintiff multiple times to the head and torso,  
9 Defendant twisted Plaintiff's arm to the point of permanent injury, and Plaintiff suffered bruising  
10 to his face from Defendant's punch as well as permanent injury to his shoulder. Thus, a  
11 reasonable jury could find that Defendant violated Plaintiff's constitutional rights, whether  
12 analyzed under the Eighth Amendment or Fourteenth Amendment. Additionally, on the current  
13 record, a jury could find that a reasonable officer would have been aware that their actions  
14 violated Plaintiff's rights. Given the factual determinations which remain to be made, the Court  
15 cannot at this point find that Defendant is entitled to qualified immunity as a matter of law.

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**IV. CONCLUSION**

Based on the foregoing, the undersigned recommends that Defendant's motion for summary judgment, ECF No 55, be DENIED.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: March 19, 2025



DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE